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Action—Implied Right of Action—Statutorily Created Protection—Legislative Intent— Health—Vulnerable Adult—Abuse or Neglect—Reporting Requirement —Mandated Reporter—Negligence—Summary Judgment— Question of Law or Fact

Whether [RCW 74.34.035](#) implies a cause of action against a mandatory reporter for negligent failure to report suspected abuse or assault of a vulnerable adult and, if so, whether there are issues of fact as to whether a nurse had cause to believe that an assault had occurred based on her patient's report regarding improper administration of morphine to a facility resident who was not the nurse's patient.

No. 91536-9, [Esther Kim, et al., \(petitioners\) v. Alpha Nursing Services, Inc., et al., \(respondents\)](#). (Oral argument 11/12/2015).

[186 Wn. App. 398 \(2015\)](#)

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Conflict of Laws—Limitation of Actions—Foreign Limitation Period— Threshold Inquiry—Conflict in Substantive Law—Necessity.

Whether in a Washington personal injury suit based on an automobile accident that occurred in Idaho, the Court of Appeals erred in holding that the Idaho statute of limitation applies without first determining whether there is a conflict between Idaho and Washington law on the substantive issue involved in the suit, and if so, whether a conflict exists.

No. 91270-0, [Woodward \(petitioner\) v. Taylor \(respondent\)](#). (Oral argument 9/24/2015).

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**Consumer Protection—Action for Damages—Unfair or Deceptive Conduct—
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No. 91393-5, *Thornell* (plaintiff) v. *Seattle Serv. Bureau, Inc., et al.* (defendants).
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**Counties—Land Use Controls—Growth Management Act—Local Compliance
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No. 91475-3, *Whatcom County* (respondent) v. *Eric Hirst, et a.* (petitioner). (Oral argument 10/20/2015).

[186 Wn. App. 32 \(2015\)](#)

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Courts—Jurisdiction—Nonresidents—Due Process—Purposeful Minimum Contacts—Tort Claim—Acts of Foreign Law Enforcement Officer in Washington—Comity.

Whether the Spokane County Superior Court has personal jurisdiction over an Idaho law enforcement officer in an action alleging that the officer committed tortious acts during a traffic stop of an Idaho resident just inside Washington State, and if so, whether the action should nonetheless be tried in Idaho on comity grounds.

No. 91466-4, *Pruczinski, et al. (respondents) v. Allen Ashby, et ux. (petitioners)*. (Oral argument 11/10/2015).

[185 Wn. App. 876 \(2015\)](#)

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Courts—Jurisdiction—Nonresidents—Foreign Manufacturer—Fair Play and Substantial Justice—Transaction of Business—Product in Stream of Commerce—Connection With Forum State—Sufficiency.

Whether in an action under the Consumer Protection Act alleging a price-fixing conspiracy in the marketing of cathode ray tubes, defendant nonresident consumer electronics manufacturers had sufficient contacts with Washington to subject them to the personal jurisdiction of Washington courts.

No. 91391-9, *State (respondent) v. LG Electronics, et al. (petitioner)*. (Oral argument 9/24/2015).

[185 Wn. App. 394 \(2015\)](#)

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Criminal Law—Former Jeopardy—Alternative Means of Committing Offense—Separate Charges of Alternative Means—Acquittal of One Charge and Deadlock on Other—Effect—Retrial on Deadlocked Charge

Whether in a prosecution on two counts of second degree assault based on the same act, one alleging assault by means of use of a deadly weapon and one alleging assault by means of recklessly inflicting substantial bodily harm, the jury's acquittal of the defendant on one of the counts and its deadlock on the other precludes the State from retrying the defendant on the deadlocked count under double jeopardy principles.

No. 91193-2, *State (respondent) v. Fuller (petitioner)*. (Oral argument 10/20/2015).

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Criminal Law—Former Jeopardy—Judgment—Collateral Estoppel—Prosecution for First Degree Murder While Armed With Firearm—Previous Acquittal on Charge of Unlawful Possession of Firearm—Effect

Whether under collateral estoppel principles as embodied in the constitutional guarantee against double jeopardy, the defendant's prosecution for first degree murder while armed with a firearm violated double jeopardy principles when in a previous bench trial the court found the defendant not guilty of unlawful possession of a firearm based on the same incident.

No. 89706-9, *In re Pers. Restraint of Moi, Mathew W. Moi* (petitioner); *State* (respondent). (Oral argument 9/8/2015).

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Criminal Law—Punishment—Sentence—Credit for Detention—Time Served Before Sentencing—Current Offenses—Existing Detention on Intervening Conviction—Overlapping Credit—Whether Allowed

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No. 91180-1, [State \(respondent\) v. Lewis \(petitioner\)](#). (Oral argument stricken; case to be determined without oral argument.)

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Criminal Law—Punishment—Sentence—Criminal History—“Same Criminal Conduct”—Child Rape and Incest

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No. 91366-8, [State \(respondent\) v. Chenoweth \(petitioner\)](#). (Oral argument 11/12/2015)

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Criminal Law—Punishment—Sentence—Life Imprisonment Without Parole—Persistent Offender Accountability Act—Prior Convictions—Vehicular Manslaughter—California Offense

Whether a criminal defendant’s prior California conviction for vehicular manslaughter is a “most serious offense” under Washington’s Persistent Offender Accountability Act.

No. 91297-1, *State* (petitioner) v. *Farnsworth* (respondent). (Oral argument 10/22/2015). ([see also Criminal Law—Robbery—First Degree Robbery—Against Financial Institution—Threat—Robbery Note—“Put the Money in the Bag”](#)).

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Criminal Law—Reckless Endangerment—Elements —Creating a Substantial Risk of Death or Serious Injury—Driving While Under the Influence of an Intoxicant—Excessive Speed—Child Passenger

Whether the State failed to prove the defendant’s driving created a substantial risk of death or serious injury, an element of reckless endangerment under [RCW 9A.36.050](#), where the State presented evidence that the defendant drove at a speed above the posted speed limit with a child passenger while having a blood alcohol concentration over .18.

No. 91623-3, *State* (petitioner) v. *Rich* (respondent). (Oral argument 11/12/2015).

[186 Wn. App. 632 \(2015\)](#)

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Criminal Law—Retail Theft—Special Circumstances—Possession of Device Designed to Overcome Security Systems—What Constitutes—Scope—Wire Cutters

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No. 91457-5, *State (respondent) v. Larson (petitioner)*. (Oral argument 10/22/2015).

[185 Wn. App. 903 \(2015\)](#)

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Criminal Law—Robbery—First Degree Robbery—Against Financial Institution—Threat—Robbery Note—“Put the Money in the Bag”

Whether in a prosecution for first degree robbery of a financial institution, a handwritten note directing a bank teller to put money in a bag without dye packs or tracking devices constituted a threatened use of force, violence, or fear of injury for purposes of the definition of robbery, [RCW 9A.56.190](#).

No. 91297-1, *State (petitioner) v. Farnsworth (respondent)*. (Oral argument 10/22/2015). (*See also* [Criminal Law—Punishment—Sentence—Life Imprisonment Without Parole—Persistent Offender Accountability Act—Prior Convictions—Vehicular Manslaughter—California Offense](#)).

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[184 Wn. App. 305 \(2014\)](#)

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**Criminal Law—Searches and Seizures—Automobiles—Warrantless Search—
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Whether in the course of stop in which the occupants of a car were ordered out and handcuffed, a police officer, after conducting a “protective sweep” of the car for any other occupants, lawfully reached into the car without a warrant to seize a gun in preparation for towing the car.

No. 90188-1, [State \(respondent\) v. Duncan \(petitioner\)](#). (Oral argument 11/17/2015).

[180 Wn. App. 245 \(2014\)](#) (Published in part)

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**Criminal Law—Searches and Seizures—Consent—Entry Into Dwelling—Right
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Whether in a criminal prosecution in which the defendant gave consent to police officers to enter his home to seize a computer while the officers were still outside his home, the evidence discovered on the computer should have been suppressed because the officers failed to advise the defendant of his right to deny, revoke, or limit consent as required by *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998), until after the officers entered the home.

No. 91529-6, [State \(petitioner\) v. Budd \(respondent\)](#). (Oral argument 10/29/2015).

[186 Wn. App. 184 \(2015\)](#)

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**Criminal Law—Trial—Joinder or Severance—Codefendant’s Statements—
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Whether under *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968), and *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), the trial court in a criminal prosecution erred in admitting a codefendant’s out-of-court statements concerning the defendant’s culpability or in not severing the trials, and if so, whether the error was harmless.

No. 91331-5, [State \(respondent\) v. Wilcoxon \(petitioner\)](#). (Oral argument 9/10/2015).

[185 Wn. App. 534 \(2015\)](#)

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**Criminal Law—Trial—Presence of Defendant—Right to Be Present—Waiver—
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Whether in a criminal prosecution in which the court proceeded with trial in the defendant’s absence after making a preliminary finding that she had voluntarily waived her right to be present by failing to appear, the court upon the defendant’s appearance was required to expressly consider on the record the defendant’s explanation for her absence in light of the presumption against waiver when making its final ruling on whether the defendant waived her right to be present.

No. 91220-3, [State \(respondent\) v. Thurlby \(petitioner\)](#). (Oral argument 9/10/2015).

[184 Wn. App. 918 \(2014\)](#)

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Industrial Insurance—Eligibility—Commission of Felony—Proof—Burden of Proof—Degree of Proof

Whether in a worker’s challenge to the denial of industrial insurance benefits on the basis that the worker was injured while committing the felony of driving under the influence of an intoxicant, *see* [RCW 51.32.020](#), the Department of Labor and Industries bears the burden of proving that the felony payment bar applies, and if so, whether the standard of proof is by clear, cogent, and convincing evidence.

No. 91357-9, *Dep’t of Labor & Indus.*(petitioner) *v. Rowley* (respondent). (Oral argument 10/27/2015).

[185 Wn. App. 154 \(2014\)](#)

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Insurance—Underinsured Motorist—Underinsured Vehicle—“Arise Out of Use” of Underinsured Motor Vehicle—Drive-By Shooting—Intentional Injury

Whether, for purposes of underinsured motorist automobile insurance coverage, an insured pedestrian’s injuries sustained after being shot by an underinsured driver who momentarily stopped or slowly drove by in his vehicle “arise out of” the driver’s use of his vehicle, and if so, whether coverage exists even if the driver intended harm.

No. 91846-5, *Kroeber* (appellant) *v. GEICO Insurance Co.* (respondent). (Oral argument 10/27/2015).

Certified Question from U. S. District Court for the Western District of Washington.

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Judgment—Foreign Judgment—Full Faith and Credit—Domestic Real Property

Whether, in a judicial foreclosure action, a Washington court determining the validity of a deed of trust that encumbers Washington property is constitutionally required to afford full faith and credit to an Idaho court order that authorized execution of the deed of trust by a conservator.

No. 91283-1, [OneWest Bank, FSB \(petitioner\) v. Erickson \(respondent\)](#). (Oral argument 10/22/2015).

[184 Wash. App. 462 \(2014\)](#)

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Limitation of Actions—Consumer Protection—State Enforcement—Parens Patriae Action—Limitation Period—Exemption—Applicability

Whether the exemption of the State from any statute of limitations under [RCW 4.16.160](#) applies to an action to enforce the Consumer Protection Act brought by the State as parens patriae pursuant to [RCW 19.86.080\(1\)](#).

No. 91263-7, [State \(respondent\) v. LG Electronics, et al. \(petitioner\)](#). (Oral argument 9/24/2015).

[185 Wn. App. 123 \(2014\)](#)

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Medical Treatment—Malpractice—Failure to Diagnose—Failure to Treat—Loss of Chance—Percentage—Expert Testimony—Necessity

Whether, to recover damages for lost chance of a better outcome in this professional malpractice lawsuit against a psychiatrist based on harm caused by the psychiatrist's patient, the plaintiff must present expert evidence of the percentage by which the psychiatrist's conduct reduced the likelihood of a better outcome.

No. 91387-1, *Volk, et al.* (respondents/cross petitioners) v. *DeMeerleer, et al.* (petitioners/cross respondents) (Oral Argument 11/17/2015). ([See also: Negligence—Duty—Protection of Others—Criminal Acts of Third Persons—Special Relationship—Psychiatry—Patient-Caused Injuries—Duty to Prevent—Scope.](#)).

[184 Wn. App. 389 \(2014\)](#)

[Petition for Review Spokane Psychiatric Clinic.](#)

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Mental Health—Involuntary Commitment—Inflicting or Attempting to Inflict Serious Physical Harm—180-Day Commitment Period—Renewal—Statute—Constitutionality

Whether [RCW 71.05.320\(3\)\(c\)\(ii\)](#), which provides for a 180-day extension of an involuntary civil commitment of a person incompetent to stand trial for violent offenses if the State presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of acts similar to the charged criminal behavior, violates the United States or Washington constitutions.

No. 90570-3, *In re Detention of M.W. & W. D.* (petitioner) (Oral argument 11/10/2015).

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**Mental Health—Involuntary Commitment—Sexually Violent Predators—
Petition—Statutory Provisions—Persons Subject to Commitment Petition—
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Whether [RCW 71.09.030\(1\)](#) authorizes the State to file a petition seeking civil commitment as a sexually violent predator of a person who was adjudicated guilty of committing a sexually violent offense as a juvenile and was subsequently released from total confinement.

No. 91385-4, *In re Det. of Anderson John C. Anderson* (petitioner); *State* ([respondent](#)). (Oral argument 9/17/2015). (*See also:* [Mental Health—Involuntary Commitment—Sexually Violent Predators—Recent Overt Act—What Constitutes—Consensual Sexual Relations with Fellow Mental Health Patients](#)).

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Mental Health—Involuntary Commitment—Sexually Violent Predators—Recent Overt Act—What Constitutes—Consensual Sexual Relations with Fellow Mental Health Patients

Whether in this petition to civilly commit a person as a sexually violent predator, the person’s noncriminal consensual sexual relationships with fellow patients at a state mental hospital more than 10 years before the commitment trial were “recent overt acts” for purposes of proving that the person is a sexually violent predator.

No. 91385-4, *In re Det. of Anderson, John C. Anderson* (petitioner); *State* ([respondent](#)). (Oral argument 9/17/2015). (*See also:* [Mental Health—Involuntary Commitment—Sexually Violent Predators—Petition—Statutory Provisions—Persons Subject to Commitment Petition—Prior Offense—Juvenile Offense—Subsequent Release from Total Confinement](#)).

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**Negligence—Duty—Protection of Others—Criminal Acts of Third Persons—
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Whether in this action for professional malpractice against a psychiatrist, the psychiatrist owed a duty of care to persons murdered by the psychiatrist's patient where the patient had expressed homicidal ideas but never specifically expressed intent to harm the victims.

No. 91387-1, *Volk, et al.* (respondents/cross petitioners) *v.* *DeMeerleer, et al.* (petitioners/cross respondents) (Oral argument 11/17/2015). ([See also: Medical Treatment—Malpractice—Failure to Diagnose—Failure to Treat—Loss of Chance—Percentage—Expert Testimony—Necessity](#)).

[184 Wn. App. 389 \(2014\)](#)

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**Negligence—Municipal Corporations—Streets—Maintenance and Repair—
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No. 91555-5, [Wuthrich](#) (petitioner) *v.* [King County](#) (respondent). (Oral argument 11/10/2015).

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Open Government—Public Disclosure—What Constitutes—Call Log—Text Messages—Personal Cellular Telephone—Device Used for Both Work and Personal Communications—Exemptions—Files Maintained for Employees—Right to Privacy

Whether [RCW 4.24.550](#), which governs the type of sex offender records that may be disclosed to the public and the circumstances under which they may be disclosed, is an “other statute” under [RCW 42.56.070\(1\)](#) of the Public Record Act, as a result of which sex offender registration forms are exempt from the broader disclosure requirements of the act.

No. 90413-8, *John Doe A., et al.* (respondents) v. *Wash. State Patrol, et al.* (appellants). (Oral argument 9/17/2015).

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Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Mulholland Case

Whether the decision in *In re Personal Restraint of Mulholland*, 161 Wn.2d 322, 166 P.3d 677 (2007), holding that sentencing courts may impose concurrent sentences for multiple serious violent felonies as a form of exceptional sentence below the standard range, constitutes a “significant change in the law” exempting a collateral challenge to a criminal judgment from the one-year time limit on collateral relief pursuant to [RCW 10.73.100\(6\)](#).

No. 91065-1, *State* (petitioner) v. *Miller* (respondent). (Oral argument 9/10/2015).

[181 Wn. App. 201 \(2014\)](#)

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**Process—Service —Foreign Party—Hague Convention—Compliance—
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Whether personal service on a Norwegian citizen at her residence in Norway was adequate to effect service under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the alternative service provisions of [CR 4\(i\)\(1\)](#).

No. 91536-9, *Esther Kim, et al., (petitioners) v. Alpha Nursing & Services, Inc., et al., (respondents)*. (Oral argument 11/12/2015).

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**Statutes—Initiatives—Local Initiatives—Validity—Predetermination—
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Whether a group of plaintiffs opposed to a proposed local initiative, which includes Spokane County, have standing to bring a pre-election challenge to the initiative where plaintiffs would be exposed to litigation if the measure passes.

No. 91551-2, *Spokane Entrepreneurial Ctr., et al. (petitioners) v. Spokane Moves to Amend the Const., et al. (respondents)*. (Oral argument 11/10/2015)

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**Vendor and Purchaser—Title—Title Insurance—Later Discovered
Encumbrance—Damages—Diminution in Value—Tender by Insurer—Breach of
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Whether in a breach of contract lawsuit against a title insurance company for diminished value of land due to a previously undiscovered easement, the jury properly found that the insurer did not breach the policy and thus awarded the insured nothing, even though it was undisputed that the insured suffered a covered loss and the insurer had previously tendered payment under the policy.

No. 91301-3, *Millies, et ux. (petitioner) v. LandAmerica Transnation, et al. (respondent)*. (Oral argument 10/27/2015).

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**Wills—Contest—Undue Influence—Presumption—Rebuttal—Proof—
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Whether in an action contesting the validity of a will in which the elderly testator left her entire estate to nonfamily members and disinherited family members, the defenders of the will produced sufficient evidence to rebut a presumption of undue influence, and if so, whether the trial court improperly relied solely on a presumption of undue influence to invalidate the will.

No. 91488-5, *In re the Estate of Eva Johanna Rova Barnes, Deceased* (Oral argument 11/17/2015).

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Witnesses—Privileges—Attorney-Client Privilege—Scope—School District Client—Former Nonparty Employees

Whether in a personal injury action brought by a former high school football player against a school district, defense counsel's communications with former district coaches not named as defendants are protected by the attorney-client privilege.

No. 90194-5, *Newman, et al.* (respondents) v. *Highland Sch. Dist. No. 203* (petitioner). (Oral argument 11/17/2015)

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